



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

FEB 10 2003

REPLY TO THE ATTENTION OF:

R-19J

Mr. D. David Altman, Esq.  
15 East Eight Street  
Suite 200W  
Cincinnati, Ohio 45202

Dear Mr. Altman:

The purpose of this letter is to respond further to the petition you submitted on behalf of Ohio Citizen Action, the Ohio Environmental Council (which was later replaced by the Ohio Public Interest Research Group (PIRG)), Rivers Unlimited, and the Ohio Sierra Club, requesting the United States Environmental Protection Agency (U.S. EPA) to withdraw approval, delegation or authorization from the State of Ohio to administer certain federal environmental programs. The petition, as submitted and amended in 1997, initially requested U.S. EPA to withdraw or revoke certain air, water and waste environmental programs based on the Ohio Environmental Audit Privilege and Immunity Law (the Audit Law). Petitioners supplemented and amended the petition on September 18, 1998, August 4, 1999, and January 27, 2000, to add allegations about how the Ohio Environmental Protection Agency (Ohio EPA) was implementing the Resource Conservation and Recovery Act (RCRA) hazardous waste program and solid waste permit program; the Clean Water Act (CWA) National Pollutant Discharge Elimination System program; and the Clean Air Act (CAA) Standards of Performance for New Stationary Sources, New Source Review, Prevention of Significant Deterioration, Non-compliance Penalties, and Title V programs. On December 21, 2000, U.S. EPA denied the Audit Law component of the petition,<sup>1</sup> but continued its review of the implementation of the Ohio EPA programs covered by the amended and supplemented petition.

U.S. EPA is denying the remainder of the petition because it did not find sufficient evidence to justify withdrawal or revocation of the programs covered by the petition. As discussed in the attachments, U.S. EPA is addressing, separate from this review, some issues raised in the petition regarding the CAA Title V program either 1) in the context of the April 10, 2002 notice of

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<sup>1</sup> As discussed in the December 21, 2000 petition denial letter addressed to you, the July 1998 amendments to the Audit Law together with the interpretations of the unamended portions of the Audit Law provided by the Ohio Attorney General, and Ohio EPA's commitment on the use of stipulations addressed U.S. EPA's legal concerns with Ohio's Audit Law regarding authorized or approved federal programs in Ohio.

deficiency (NOD) published at 67 Fed. Reg. 19175 (April 18, 2002);<sup>2</sup> or 2) in the PIRG litigation before the United States Court of Appeals for the Sixth Circuit.

Beginning in January of 2000, U.S. EPA Region 5 staff conducted reviews of Ohio's federally delegated, authorized or approved environmental programs covered by the petition. U.S. EPA staff visited Ohio EPA district and central offices, the Ohio Attorney General's Office and local air agencies; interviewed employees; and reviewed files. U.S. EPA staff also reviewed the affidavits submitted by the petitioners in July and August of 2000. U.S. EPA reviewed Ohio EPA's implementation of the affected programs for the period 1995 to 2000.

On September 4, 2001, U.S. EPA Region 5 made public a preliminary report, dated August 30, 2001, entitled "Draft Report on U.S. EPA Review of Ohio Environmental Programs" (Draft Report) summarizing the petitioners' allegations and setting forth its preliminary findings with respect to the requests for withdrawal or revocation. The draft report also made recommendations that, if implemented, would alleviate concerns related to the withdrawal criteria and obviate the need for further review. U.S. EPA held two public meetings in Columbus on November 13, 2001, to answer questions and take comments on the report. U.S. EPA also accepted comments from the public until January 14, 2002. U.S. EPA has reviewed the comments and has followed up with Ohio EPA on the recommendations made in the Draft Report.

I am attaching a final report (Attachment A) and background documents (Attachments B, C, D, and E), which detail U.S. EPA's findings with respect to each allegation in your petition for each program, along with a responsiveness summary (Attachment F) that responds to the comments raised at the public meeting and during the comment period.

Because the petition seeks withdrawal or revocation of programs, the focus of our review was whether it is appropriate to initiate withdrawal or revocation proceedings based on the withdrawal criteria for each of the affected programs. As detailed in the attached final report and background documents, the CAA, CWA and RCRA and their implementing regulations set forth the requirements, and the withdrawal or revocation criteria for programs authorized, delegated and approved pursuant to those Acts. U.S. EPA reviewed Ohio EPA's implementation of each program based on the criteria and the requirements for that program.

While U.S. EPA will not at this time initiate withdrawal or revocation proceedings for the programs covered by the petition, it did review them thoroughly. Moreover, Ohio EPA has taken steps in each program that should benefit its implementation of those programs. As detailed in Attachment G, U.S. EPA has also followed up on many of the facility-specific concerns raised by the petitioners and commenters. Your involvement on behalf of your clients has highlighted the importance of these programs and U.S. EPA recognizes your commitment to protect human

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<sup>2</sup> Ohio EPA filed a petition for review of the NOD in the United States Court of Appeals for the Sixth Circuit.

health and the environment in Ohio. Please do not hesitate to contact Bertram C. Frey, Deputy Regional Counsel, Region 5, at (312) 886-1308 if you have questions or comments regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Skinner", with a stylized, flowing script.

Thomas V. Skinner  
Regional Administrator

Enclosure

cc: Christopher Jones, Director, Ohio EPA  
Jim Petro, Ohio Attorney General